

BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Update  
Surcharge Mechanisms to Ensure Equity  
and Transparency of Fees, Taxes, and  
Surcharges Assessed on Customers of  
Telecommunications Services in California

R.21-03-002  
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**COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED  
DECISION UPDATING THE MECHANISM FOR SURCHARGES TO SUPPORT  
PUBLIC PURPOSE PROGRAMS**

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## I. INTRODUCTION

Pursuant to Order Instituting Rulemaking R.21-03-002 (OIR), The Utility Reform Network (TURN) hereby submits these opening comments in response to the September 2, 2022 Proposed Decision Updating the Mechanism for Surcharges to Support Public Purpose Programs (PD).<sup>1</sup> While revisions to the surcharge mechanism are necessary to ensure that funding is sustainable, unfortunately, the PD's approach to revising the mechanism will not result in a sustainable fund. Instead, they will cause a dramatic shift in surcharge recovery, substantially reducing surcharges to business customers and increasing surcharge revenue from residential customers. The Commission's public purpose programs support robust and meaningful communications access for communities—including seniors, individuals with disabilities, people of color, and limited-English and non-English speaking customers—whose needs are not otherwise being met by the California communications marketplace. However, the PD's proposed surcharge methodology, based on access line counts, unfairly shifts the burden of public purpose program support onto the shoulders of residential customers who are already reeling from the impact of inflation and the lingering impact of the COVID-19 pandemic.

Under the current mechanism, both residential and business customers are assessed surcharges on their bills to fund the contributions base that supports public purpose programs. The existing approach is consistent with the statutory requirement that the Commission equitably administer the LifeLine program.<sup>2</sup> In fact, the Order Instituting Rulemaking (OIR) in this proceeding does not mention any equity distribution problems associated with the current surcharge recovery across customer classes. Rather, the OIR is focused on perceived problems with the sustainability of a revenue-based surcharge

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<sup>1</sup> Proposed Decision of ALJ Fortune, "Decision Updating the Mechanism for Surcharges to Support Public Purpose Programs," R.21-03-002 (mailed September 2, 3033) (PD).

<sup>2</sup> See P.U. Code § 871.5(d): "The Legislature finds and declares [...] The furnishing of lifeline telephone service is in the public interest and should be supported fairly and equitably by every telephone corporation, and the commission, in administering the lifeline telephone service program, *should implement the program in a way that is equitable, nondiscriminatory, and without competitive consequences for the telecommunications industry in California.*" (Emphasis added); P.U. Code PUC §871.7 (c) and (d): "It is the intent of the Legislature that the commission initiate a proceeding investigating the feasibility of redefining universal telephone service by incorporating two-way voice, video, and data service as components of basic service. It is the Legislature's further intent that, to the extent that the incorporation is feasible, that it promote equity of access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits [...] For purposes of this section, the term "feasibility" means consistency with all of the following: (1) *Technological and competitive neutrality.* (2) *Equitable distribution of the funding burden for redefined universal service as described in subdivision (c), among all affected consumers and industries, thereby ensuring that regulated utilities' ratepayers do not bear a disproportionate share of funding responsibility*" (emphasis added).

mechanism.<sup>3</sup> Revising the surcharge mechanism need not, and should not, be accomplished by adopting an approach that unfairly shifts the contribution recovery burden to residential customers.

The record shows that the current mechanism shares the burden of surcharge recovery equitably between customer classes. However, the Proposed Decision (PD) contains no data about the impacts of its revised approach on different customer classes, nor does it refer to any data that has been presented during this proceeding by staff or parties.<sup>4</sup> TURN believes that the Commission must employ a data-driven approach when reforming the surcharge mechanism.<sup>5</sup> It is critical that the Commission consider the impact of the PD's proposal in light of the data in the record analyzed by parties in their comments. The record contains two staff reports describing possible revisions to the surcharge mechanism in the record. Staff Report - Part 1<sup>6</sup> and Staff Report - Part 2.<sup>7</sup> According to the Staff Report - Part 2, the enacted fiscal year 2020-2021 public purpose program budget total was approximately \$726 million.<sup>8</sup> Additional data provided in the Staff Report – Part 2 indicates that subscribers to mobile, VoIP, and POTS services contributed approximately \$352 million in 2020,<sup>9</sup> with the balance, about \$375 million, being derived from business service revenues. Thus, under the current public purpose program surcharge mechanism both business and residential customers contribute to the recovery of the costs of the public purpose programs. This is appropriate as both business and residential customers benefit from the existence of the public purpose programs. For example, while low-income consumers benefit directly from the California Lifeline program, businesses benefit from the universal service that is promoted with the Lifeline program through greater connectivity to their customers and employees.

The PD fails to address the key public policy issue of the existing distribution of surcharge recovery across customer classes, and how that distribution will be affected by the PD's proposed access-line-based surcharge recovery mechanism. If the distribution of the surcharge recovery across customer classes changes, the Commission should make findings that explain how the changed

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<sup>3</sup> OIR, pp. 5-8; see also, PD at pp. 3-4.

<sup>4</sup> PD, *passim*.

<sup>5</sup> TURN and Center for Accessible Technology (CforAT) Opening Comments, April 5, 2021, pp. 4-6.

<sup>6</sup> R. 21-03-002, Order Instituting Rulemaking to Update Surcharge Mechanisms to Ensure Equity and Transparency of Fees, Taxes and Surcharges Assessed on Customers of Telecommunications Services in California, October, 2021, Assigned Commissioner's Scoping Memo and Ruling, Attachment B, Staff Report Part 1, June 28, 2022.

<sup>7</sup> R.21-03-002, E-Mail Ruling Updating Proceeding Schedule and Providing Communications Division Staff Report Part 2, October 29, 2021.

<sup>8</sup> Staff Report Table 7, p. 20.

<sup>9</sup> Based on data in Staff Report, Table 6, p. 18.

distribution results in just and reasonable rates and is otherwise consistent with the statutory provisions regarding the equity of the Commission's administration of the surcharge mechanisms. The Commission should also make findings that any revised surcharge recovery mechanism is consistent with public policy objectives, such as the promotion of universal service and the Commission's Environmental & Social Justice Action Plan<sup>10</sup> which states that "Continuing to assess the cumulative impact of rates on households and working to mitigate these impacts on the most burdened households will remain a priority in all actions the CPUC takes."<sup>11</sup> The PD makes no such findings.

As will be discussed further below, the PD's proposed surcharge recovery mechanism, based on a monthly per-line surcharge for wireless, VoIP, and POTS service customers, results in an increase in surcharge contributions of for wireless, VoIP, and POTS service customers of approximately \$400 million per year.<sup>12</sup> This will result in higher bills to these customers. The regressive nature of this shift in surcharge burden has even been recognized by major service providers and their trade groups,

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<sup>10</sup> CPUC Environmental & Social Justice Action Plan, Version 2.0, April 7, 2022.

<sup>11</sup> CPUC Environmental & Social Justice Plan, Version 2.0, April 2022, p. 22.

<sup>12</sup> Line counts from Staff Report, Table 6, p. 18. The Staff Report does not show whether any of the lines shown in Table 6 are business lines. As will be discussed further below, business customers are more likely to rely on PBX and/or Centrex services, or on broadband services alone. It seems likely that the overwhelming majority of access lines shown in Table 6 are residential lines.

including AT&T,<sup>13</sup> Charter,<sup>14</sup> Comcast,<sup>15</sup> Consolidated,<sup>16</sup> Cox,<sup>17</sup> CTIA,<sup>18</sup> and MCI/Verizon.<sup>19</sup> All of these parties have argued that the access-line-based approach, first proposed in the Staff Report – Part 2, and now adopted in the PD, all but ensures an inequitable surcharge recovery mechanism.

In TURN and the Center for Accessible Technology’s (CforAT) OIR opening comments, we stated that any transition away from the current revenue-based approach to supporting public purpose programs must, at a minimum:

- Result in a fair and equitable distribution of burden across customer classes, including steps to prevent increases in the existing contribution burden on residential service customers;
- Provide a sustainable and sufficient funding source for long-term public purpose program fund stability;

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<sup>13</sup> “To the extent that all consumers would pay the same flat fee per line that bears no proportion to their telecom expenditures, the answer is yes, a per-line surcharge would be regressive. Moreover, because it is highly likely that there are significantly more consumer connections in California than business connections – and in particular, mobile wireless consumer connections – the effect of such a change is likely to shift a greater proportion of the PPPs’ funding burden from businesses to consumers and, in particular, to mobile wireless consumers.” AT&T Opening Comments on OIR, April 5, 2021, p. 6.

<sup>14</sup> “It is critical that any transition to line-based assessment does not become a means of increasing the overall amount collected from customers.” Charter Opening Comments on OIR, April 5, 2021, p. 3.

<sup>15</sup> “The transition should not result in an increase in the total amount of surcharges paid by voice and telecommunications customers. . . . Comcast believes the affordability of voice and telecommunications services is an issue of paramount importance for both service providers and the Commission.” Comcast Opening Comments on OIR, April 5, 2021, p. 2.

<sup>16</sup> “Additionally, to avoid an overly high access line surcharge rate, the Commission should not incorporate discounting or tiering for multiline services into the new access line framework. Doing so could disproportionately shift the burden of supporting Public Purpose Programs (“PPPs”) from large businesses to residential subscribers.” Consolidated Opening Comments on OIR, April 5, 2021, p. 1.

<sup>17</sup> “Cox anticipates that a uniform, flat-rate per-line connection fee assessed on all customers regardless of the amount or type of telecommunications services purchased would be deemed “regressive.” Specifically, it would disproportionately impact low-income customers because they would be paying the same surcharge amount as high-income households regardless of the amount paid for services purchased.” Cox Opening Comments on OIR, April 5, 2021, p. 6.

<sup>18</sup> “...the proposal to implement a regressive contribution mechanism for funding the Public Purpose Programs and the Commission’s user fee (collectively ‘PPPs’) will do nothing to further the Commission’s goals and will actually make it more difficult to achieve universal service goals because it disproportionately targets less affluent customers. A connections-based mechanism for PPP charges therefore should be rejected.” CTIA Comments on OIR, April 5, 2021, p. 1.

<sup>19</sup> “Because all customers (regardless of their income or wealth) would pay the same per-access line charge for their telecommunications services regardless of whether they purchase a small or large amount of telecommunications services, a per-access line charge is regressive. It is likely that a per-access line charge would be borne disproportionately by consumers who are value-conscious or low-income as they would pay a greater amount in surcharge relative to the overall amount of their telecommunications bill. Such a policy would not be in the public interest.” MCI/MCI Metro/Verizon Wireless Comments on OIR, April 5, 2021, pp. 5-6.

- Be manageable to implement, transparent to consumers, and easy to enforce;
- Provide flexibility to adjust as the marketplace evolves and program budgets change; and
- Represent one part of a cohesive universal service framework that supports federal and state policies.<sup>20</sup>

As discussed below, the mechanism proposed in the PD is deficient in each of the key areas listed above. The PD shifts the surcharge recovery burden from business customers to residential customers, thus the PD's approach is not fair or equitable. Moreover, the PD rejects the inclusion of broadband in the contribution base, therefore PD's approach is not sustainable, nor is it flexible enough to adjust as the marketplace evolves. Because the PD's access-line-based approach fails to reasonably define access lines and proposes to represent the surcharge recovery as a single line item on customer bills, the PD's approach is challenging to implement and will not be transparent to customers. Finally, the PD's approach fails to appropriately address the statutory equity considerations associated with the administration of the Commission's public purpose programs.

TURN continues to encourage the Commission to include broadband revenues in the contributions base, and to adopt a hybrid approach in which business customers continue to be assessed on a revenue basis and residential customers are assessed on a per-line basis, subject to a hold harmless provision.<sup>21</sup> TURN's approach will avoid the regressive and inequitable outcomes of the PD's proposed revision to the surcharge mechanism and help the Commission meet its statutory requirements.

## **II. DISCUSSION: THE PD'S ACCESS LINE APPROACH DOES NOT DELIVER A SUSTAINABLE, FAIR AND EQUITABLE DISTRIBUTION OF PUBLIC PURPOSE PROGRAM SUPPORT ACROSS CUSTOMER CLASSES.**

### **A. The PD Provides No Data on the Impact of the Proposed Access-Line-Based Mechanism on California Consumers.**

Despite ample data and analysis in the record about the impact of the PD's proposed access-line based revision to the surcharge mechanism, the PD does not discuss this data in the course of reaching its decision. The PD does not state the impact of its proposals on surcharges to customers, despite the fact that this data was provided in Staff Report – Part 2 and discussed in detail by the parties. The PD

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<sup>20</sup> TURN and CforAT Opening Comments on OIR, April 5, 2021, p. 2.

<sup>21</sup> TURN and CforAT Opening Comments on OIR, April 5, 2021, pp. 4, 23-25. See also, TURN and CforAT Comments on Staff Report, Part 2, November 30, 2021, pp. 3-16.

does not acknowledge the substantial negative impact on residential customers, and the windfall for business customers, that its access-line-based approach would generate.

The PD mirrors the approach to surcharge reform presented in Staff Report – Part 2.<sup>22</sup> In comments, TURN and CforAT addressed the substantial shift in the surcharge recovery burden associated with Staff Report – Part 2’s approach.<sup>23</sup> No party disputed TURN and CforAT’s analysis.<sup>24</sup> The data contained in Staff Report – Part 2 clearly shows that, the PD, if adopted, will dramatically increase the recovery of surcharge revenues from non-business customers.<sup>25</sup>

Based on information provided in Staff Report – Part 2, (Table 6), the total surcharge associated with mobile, VoIP, and POTS service customers for 2020 was just over \$352 million. However, with the PD’s proposed \$1.11 per access line per month surcharge, the surcharge revenues associated with mobile, VoIP, and POTS service customers will increase dramatically to over \$750 million per year—an 113 percent increase. TURN and CforAT’s Table A, included in our comments on Staff Report – Part 2 and provided below, summarizes the surcharge revenue calculations based on access line count data from Staff Report – Part 2 and the PD’s proposed \$1.11 per access line surcharge.<sup>26</sup> It is clear from Table A that the PD’s approach will result in an *increase* in surcharge collection from mobile, VoIP, and POTS customers combined of nearly \$400 million per year.

<b>Table A: Impact of Staff Report Surcharge Proposal on Wireless, VoIP, and POTS Subscribers</b>						
<b>Service</b>	<b>Subscriber Count (A)*</b>	<b>Average Monthly Intrastate Surcharge (B)*</b>	<b>Current Intrastate Annual Assessment (A)x(B)x12=(C)*</b>	<b>PD’s Proposed Monthly Intrastate Surcharge (D) ‡</b>	<b>PD’s Intrastate Annual Assessment (A)x(D)x12=(E)†</b>	<b>Change in PPP Support Burden (E) – (C)†</b>
Mobile	45,089,008	\$0.27	\$146,088,386	\$1.11	\$600,585,587	+\$454,497,201

<sup>22</sup> Compare Staff Report – Part 2, pp. 15-19 with PD, pp. 1, 52-53.

<sup>23</sup> TURN and CforAT Comments on CD Staff Report—Part 2, pp. 10-13.

<sup>24</sup> See, AT&T Reply Comments, December 15, 2021, p. 5; Cal Advocates Reply Comments, December 15, 2021, *passim*; CTIA Reply Comments, December 15, 2021, p. 3; MCI Metro Reply Comments, December 15, 2021, p. 3; Small LEC Reply Comments, *passim*; CCTA Reply Comments, *passim*; CETF Reply Comments, December 15, 2021, *passim*; Cox Reply Comments, December 15, 2021, *passim*; Time Warner Reply Comments, December 15, 2021, *passim*.

<sup>25</sup> The key data from Staff Report – Part 2, which is essential for interpreting the PD’s approach to surcharge reform is contained in the Staff Report’s Table 6. Table 6 is based on topline numbers shown in Staff Report – Part 2 Appendix A and shows 2020 subscriber counts and surchargeable revenue in California for mobile, VoIP, and POTS customers.

<sup>26</sup> TURN and CforAT Comments on CD Staff Report—Part 2, p. 11.



VoIP	7,295,031	\$0.87	\$76,160,124	\$1.11	\$97,169,813	+\$21,009,689
POTS	3,954,606	\$2.74	\$130,027,445	\$1.11	\$52,675,352	-\$77,352,093
<b>Totals</b>	<b>56,338,645</b>		<b>\$352,275,955</b>		<b>\$750,430,751</b>	<b>+\$398,154,797</b>
* Subscriber count, Average Monthly Surcharge, and Current Intrastate Assessment data from Staff Report's Table 6. ‡ Based on the PD's Surcharge Value of \$1.11. per access line. † Calculated values.						

Table A also shows that wireless mobility customers will bear the brunt of the PD's surcharge methodology. Wireless mobility customers' contribution will increase by nearly \$455 million. VoIP customers will experience a surcharge assessment increase of \$21 million, while POTS customers will experience a decrease of \$77 million. The PD's approach addresses the current inequitable burden on POTS customers, who have borne an excessive contribution burden for an extended period of time. But the PD's the failure to clearly address surcharge recovery from business customers creates the likelihood of an inequitable shift in the recovery burden for all California residential wireless and VoIP consumers. This is worse especially for the ESJ communities that are more likely to rely on wireless mobile service, particularly those in lower income brackets.<sup>27</sup> The Commission should reject the PD's approach and instead craft an equitable solution that requires that business customers carry at least their current burden. TURN and CforAT's hybrid approach would accomplish this objective.<sup>28</sup> However, if the Commission seeks to continue with an access-line-based approach, the Commission should hold residential customers harmless by capping the access line surcharge for residential customers to generate a total contribution from residential customers at the current level. Business customers would then pay a differential access-line-based surcharge to generate the necessary total surcharge revenues needed to support the public purpose programs. This revised approach would satisfy the statutory requirement to implement an equitable, nondiscriminatory program and would be consistent with the Commission's ESJ Action Plan objectives.

<sup>27</sup> According to the May 2022 National Health Interview Survey, households in the 100% to 200% above poverty range are more likely to be wireless-only than those in the 200% or more above poverty range. See Table 2 in Stephen J. Blumberg, Ph.D., and Julian V. Luke, "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey," July-December 2021.

<https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202205.pdf>

<sup>28</sup> TURN and CforAT April 5, 2021 Comments, pp. 10-11.

Information in Table A provides a clear indicator of the inequity of the PD's approach and illustrates how rate shock will follow should the Commission adopt the PD's recommendations. The Commission should address this significant shortcoming in the PD's approach and ensure that any future surcharge recovery mechanism does not unfairly shift the public purpose program burden away from business subscribers and onto residential subscribers.

**B. The Negative Impact of the PD's Approach on Wireless Family Plans is Particularly Acute.**

The PD's access line mechanism approach has additional equity problems that are rooted in its approach to counting access lines based on telephone numbers. Namely, the surcharge will apply to each line in a wireless household that has a unique telephone number.<sup>29</sup> By using telephone numbers as the basis for assessing contribution surcharges, households with multiple wireless lines (e.g., family plans) will be assessed a surcharge for each telephone number. This means that a household will be assessed multiple surcharges on their bills. This is an artifact of the design and use of wireless mobility services. Basic landline service is a household-oriented service with a single telephone line and (therefore a single number) potentially serving all household members. In contrast, wireless mobility services are personal services, with each family member requiring a wireless telephone with a separate phone number. As noted in the Staff Report, the current average monthly surcharge submission remitted per wireless subscriber is \$0.27.<sup>30</sup> Transitioning to the PD's per number surcharge of \$1.11 will result in a family of four's surcharge burden increasing from \$12.96 per year to \$53.76 per year. This dramatic increase is neither reasonable nor equitable.

As illustrated by the discussion above and data shown above in Table A, the PD's recommended surcharge mechanism will not provide an equitable means to generate revenues to support the Commission's public purpose programs. Instead, the PD will result in a highly regressive surcharge mechanism, with a substantial shift in the recovery of surcharge revenues away from business customers to be borne by residential customers. The burden would be felt particularly by families with multiple cell phones in a household. While the PD points to the exemption from surcharge payments for LifeLine customers,<sup>31</sup> this protection does not extend to those families and individuals who would experience a hardship due to the increased surcharge but who have income levels that prevent them from

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<sup>29</sup> PD, p. 52.

<sup>30</sup> Staff Report, Table 6, p. 18.

<sup>31</sup> PD, p. 39.

participating in the LifeLine program. Many ESJ communities throughout California may potentially fall in this segment. Certainly, given the backdrop of a lingering pandemic and rising general price inflation, there are large numbers of California households that will experience difficulty as a result of rate shock inherent in the PD's access-line-based surcharge mechanism.

### **C. The PD Adopts an Inappropriate Interpretation of the Term “Equitable.”**

The PD acknowledges that to comply with federal statutes, a surcharge mechanism must require telecommunications carriers to contribute to universal service on an “equitable and non-discriminatory basis.”<sup>32</sup> However, the PD fails to address the real equity issues that residential customers will face due to the PD's proposed access-line-based assessment approach. As is clear from the following quote, the PD confuses the terms equal and equity:

Specifically, with the per-access line surcharge mechanism, all users (residential, small business, large business) and all service types would pay the same amount. This would create *equity* where the current burden on wireline customer will be shifted to all customers (wireline, VoIP, and wireless) regardless of service type.<sup>33</sup>

While such a distribution of costs may be *equal*, it is not *equitable*. When making this statement, the PD overlooks the other current source of support for the Commission's public purpose programs—business customers. As discussed above, business customers will experience a dramatic decrease in their contributions, shifting the burden onto residential customers, an outcome that is neither equal nor equitable.

The PD acknowledges concerns expressed by CTIA and TURN and CforAT regarding the negative impact of an access-line-based surcharge on low-income customers.<sup>34</sup> However, while the PD exempts LifeLine customers and incarcerated individuals from the surcharge,<sup>35</sup> the PD disregards the negative impact on low-income customers who do not qualify for the LifeLine program. The PD states:

While we understand the concern raised by several parties that this (the per-access line surcharge) may, theoretically, have a negative effect on lower income customers that don't qualify for LifeLine, we cannot actually identify these “lower income” customers, nor do we have a set of criteria for constituting “lower income.”<sup>36</sup>

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<sup>32</sup> PD, p. 8.

<sup>33</sup> PD, p. 35, emphasis added.

<sup>34</sup> PD, pp. 46, 31.

<sup>35</sup> PD, p. 38.

<sup>36</sup> PD, p. 35.

There is nothing “theoretical” about the negative impact on these low-income customers. The surcharge increase proposed by the PD is substantial and has previously been highlighted by TURN and CforAT.<sup>37</sup> Furthermore, just because the PD cannot identify specific “lower income” customers does not mean that those customers disappear. The Commission has committed significant resources to issues associated with utility affordability, recognizing that there are lower-income customers who fall outside of the qualification levels associated with the Commission’s low-income public purpose programs.<sup>38</sup> The Commission should revise the PD’s approach as it considers the impact of an access-line-based surcharge mechanism on lower income consumers. The current PD does not reflect a thoughtful approach to equity issues and instead will inflict particular harm on lower-income consumers who do not qualify for LifeLine.

In addition, the PD’s comparison of its surcharge proposal with sales taxes is misplaced. “Like a sale (*sic*) tax on *grocery bill*, there is no sale (*sic*) tax differentiated by customer income.”<sup>39</sup> The PD is correct that sales taxes are not differentiated by income, but the failure to differentiate by income is exactly the reason why sales taxes are notoriously regressive, unfair, and harmful to consumers with lower incomes. As noted by the Center on Budget and Policy Priorities, “Sales taxes worsen income and racial inequalities. Low-income people pay much more of their income in sales taxes than higher-income people do because they must spend a very large share of their income to meet basic needs.”<sup>40</sup> Sales taxes on groceries are the most egregious form of regressive taxation precisely because lower income consumers cannot substitute away from food. As it is with the consumption of groceries, low-income consumers cannot easily substitute away from communications services. Furthermore, low-income customers are more likely to subscribe to the wireless mobility services that will bear the brunt of the PD’s regressive access-line-based surcharge mechanism.<sup>41</sup> The PD’s access-line-based approach

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<sup>37</sup> TURN and CforAT Comments on Staff Report, November 5, 2021, pp. 5-6 and 10.

<sup>38</sup> See, for example, Decision Adopting Metrics and Methodologies of Assessing the Relative Affordability of Utility Service, R. 18-07-006, July 16, 2020, Finding of Fact 8, p. 91.

<sup>39</sup> PD, p. 35, emphasis added.

<sup>40</sup> “States That Still Impose Sales Taxes on Groceries Should Consider Reducing or Eliminating Them,” Center on Budget and Policy Priorities, April 1, 2020. <https://www.cbpp.org/research/state-budget-and-tax/states-that-still-impose-sales-taxes-on-groceries-should-consider>

<sup>41</sup> According to the May 2022 National Health Interview Survey, households in the 100% to 200% above poverty range are more likely to be wireless-only than those in the 200% or more above poverty range. See Table 2 in Stephen J. Blumberg, Ph.D., and Julian V. Luke, “Wireless Substitution: Early Release of Estimates from the National Health Interview Survey,” July-December 2021. <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202205.pdf>

to the surcharge echoes the regressive nature of sales taxes and should be revised as suggested in these comments.

**D. The PD Errs in Adopting a Definition of Access Line that Omits Centrex and PBX Business Lines.**

The PD states that its proposal for collecting surcharge revenues using an access-line-based methodology will “not be affected by differences in carriers’ billing or business models. All carriers would be required to count and report access lines in the same manner.”<sup>42</sup> This statement is not correct. The PD’s proposed definition is similar to the definition in the March 30, 2022 Administrative Law Judge’s Ruling (ALJ Ruling) requesting comment on Staff’s revised access line definition.<sup>43</sup> However, the PD errs by omitting a key sentence in the ALJ Ruling clarifying that private branch exchange (PBX) and Centrex business lines are included in the definition of access line.<sup>44</sup> This omission in the PD makes it unclear about whether these business lines would be included in the contribution base. The exclusion of Centrex and PBX would significantly decrease the number of business lines that would be assessed a surcharge to support public purpose programs.

The PD offers the following core definition of Access Line:<sup>45</sup>

“Access Line”<sup>176</sup> means a wire or wireless connection that provides a real-time two-way voice telecommunications service or VoIP service to or from any device utilized by an end-user, regardless of technology, which is associated with a 10-digit NPA-NXX number or other unique identifier and has a service address or Place of Primary Use in California.<sup>46</sup>

PD footnote 176 provides additional clarification about its access line definition. The PD’s footnote 176 reads:

The number of access lines a service provider provides to an end-user shall be deemed equal to the number of inbound or outbound two-way communications by any technology that the end-user can maintain at the same time as provisioned by the service provider’s service.<sup>47</sup>

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<sup>42</sup> PD, p. 17.

<sup>43</sup> R.21-03-002, Administrative Law Judge’s Ruling, March 30, 2022, pp. 1-2.

<sup>44</sup> *Id.*, p. 2.

<sup>45</sup> In addition to the core definition discussed below, the PD’s definition of Access Line also contains recitations to various code sections regarding the meaning of Telecommunications and VoIP service, as well as definition of “service address” and “place of primary use.” TURN and CforAT believes that these elements of the PD’s Access Line definition are uncontroversial.

<sup>46</sup> PD, p. 52, note number 176 appearing in the original.

<sup>47</sup> PD, p. 52.

The origin of footnote 176 is the ALJ’s March 30, 2022 Ruling, which offered a revised definition of the term access line.<sup>48</sup> While the PD’s definition is similar to the one appearing the March 30, 2022 ALJ ruling, a key clarification is missing from PD’s access line definition. In the March 30, 2022 ALJ Ruling, the following clarification was provided regarding the then-proposed definition:

*For purposes of this definition, private branch exchange (PBX) lines and Centrex lines are “access lines.”* The number of lines a service provider provides to an end-user shall be deemed equal to the number of inbound or outbound two-way communications by any technology that the end-user can maintain at the same time using the service provider’s service.<sup>49</sup>

While TURN and CforAT recommended changes to the March 30 definition,<sup>50</sup> the key point for the Commission to consider here is that the PD’s definition omits any specific reference to PBX or Centrex lines. If the Commission adopts the PD’s access line definition, the PD should be revised to explicitly state that PBX and Centrex Lines are included in the definition of “access line” and adopt the language proposed on this matter in our April 29, 2022 comments.<sup>51</sup> Failing to include PBX and Centrex lines as being subject to the surcharge will mean that the resulting recovery mechanism will exempt a large number of business lines from contributing to public purpose programs. This will shift the recovery burden to residential customers to an even greater degree.

The PD also fails to define the term “unique identifier” that is used in the PD’s access line definition as a means of counting access lines in lieu of a telephone number. The March 30, 2022 ALJ Ruling introduced the term “unique identifier,” as well as pointing to “10-digit number” in its core definition of Access Line. As noted by Cal Advocates in their April 29, 2022 Comments on the ALJ ruling:

...the Commission has not defined or given examples to what “other unique identifier(s)” are in the revised “access line” definition. The Commission should include more guidance on unique

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<sup>48</sup> PD, p. 43.

<sup>49</sup> ALJ Ruling, March 30, 2022, p. 2, emphasis added.

<sup>50</sup> TURN and CforAT April 29, 2022 Opening Comments on the March 30, 2022 Administrative Law Judge’s Ruling, p. 3. TURN and CforAT suggested that the definition be corrected/clarified to include the following: “For purposes of this definition, private branch exchange (PBX) lines and Centrex lines are “access lines.” The number of lines a service provider provides to an end-user shall be deemed equal to the number of inbound or outbound two-way communications by any technology that the end-user can maintain at the same time using the service provider’s service.”

<sup>51</sup> TURN and CforAT Opening Comments on the March 30, 2022 Administrative Comments, April

identifiers and clarify if examples such as a Common Short Code or IP address would be included.<sup>52</sup>

Unfortunately, the PD fails address Cal Advocates' point. When discussing the "unique identifier" terminology included in the PD's definition of access line, the PD cites to Cal Advocates comments,<sup>53</sup> but fails to address Cal Advocates request that the Commission should provide guidance on the nature of the "unique identifiers" that will be associated with access lines. The PD offers no guidance as to what those unique identifiers are or how the definition can be implemented. If the Commission adopts the PD's access line definition, it must provide clarification on the nature of the unique identifiers that will be used in the surcharge assessment process, as requested by Cal Advocates.

Given the PD's ambiguity in the definition of "access line," the contribution of business services to the support of the public purpose programs is unclear. Moreover, the PD includes no data for the Commission to consider regarding the impact of the new access line definition, or any other element of the PD's approach, on surcharge contributions by customer class. The record clearly shows that there are other business services, such as "intrastate high capacity circuits" that currently contribute to the public purpose programs surcharge, but which will not contribute under the PD's approach.<sup>54</sup> The PD is unclear about whether it intends to include "unique identifiers" associated with "intrastate high capacity circuits," or other intrastate business services that currently contribute to the surcharge mechanism. The PD should be revised to address these details regarding the treatment of business services with respect to the definition of "access line."

#### **E. The PD Does Not Provide a Framework for a Sustainable Support Mechanism for Public Purpose Programs.**

The PD fails to address the sustainability of the public purpose support mechanism because it precludes the inclusion of broadband services in the contribution base. As the Staff Report – Part 2 notes, businesses use communication platforms such as Microsoft's Teams<sup>55</sup> that enable voice calls using the application software and a broadband connection. The current exclusion of broadband revenues from the contribution base, while the Commission's existing public purpose programs support

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<sup>52</sup> Cal Advocates Opening Comments on the March 30, 2022 Administrative Law Judge's Ruling Requesting Comment, April 29, 2022, p. 3.

<sup>53</sup> PD, p. 51.

<sup>54</sup> CCTA Comments on March 30, 2022 ALJ Ruling, p. 3; Securus November 30, 2021 Comments on Staff Report, p. 2.

<sup>55</sup> Staff Report, p. 16.

broadband services, distorts outcomes associated with those programs.<sup>56</sup> It is vital for the Commission to address this imbalance.

#### **F. The PD Does Not Promote Transparent Billing**

The PD errs by failing to adopt a surcharge proposal that would make surcharges on customer bills transparent to customers. As previously noted by TURN and CforAT, consumers should be able to easily see the programs supported through surcharges on their bills.<sup>57</sup> For this reason, TURN has opposed proposals to bundle all surcharge amounts into a single line item on customer bills because a bundled surcharge reduces transparency about program costs.<sup>58</sup>

The PD disagrees and instead would mandate a single line-item on customer bills.<sup>59</sup> Given that the PD will dramatically increase surcharges tens of millions of California consumers, the transparency issue is all the more important. While the PD refers to the need to update the CPUC website “to reflect the changes” contained in the PD,<sup>60</sup> the PD does not state the information to be included in the updates. The PD references recommendations made by Cal Advocates and Small LECs on this matter,<sup>61</sup> but fails to include the specific recommendations made by Cal Advocates. Namely:

The webpage should include, in plain, straightforward language: a description of each of the six public purpose programs and the user fee, a surcharge table breaking down the fund allocations to each program and the user fee, contact information for questions, and links to any prior and subsequent proceedings related to telecommunications surcharges and user fees.<sup>62</sup>

TURN agrees with Cal Advocates’ recommendation. If the Commission decides to bundle customer surcharge amounts on bills and provides information about surcharges on its website, the web site information must be clear and understandable to consumers. Beyond the specifics identified by Cal Advocates, the Commission should present information using jargon-free terminology, in accessible formats and in multiple languages, as well as ensuring that the content is optimized for viewing on

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<sup>56</sup> TURN and CforAT Opening Comments, p. 11.

<sup>57</sup> TURN and CforAT Comments on Staff Report, Part 2, November 30, 2021, pp. 15-16.

<sup>58</sup> *Id.*

<sup>59</sup> PD, p. 2

<sup>60</sup> PD, p. 63.

<sup>61</sup> PD, p. 62.

<sup>62</sup> Cal Advocates Comments, November 30, 2021, pp. 9-10.



multiple platforms including smartphones and tablets, as well as personal computers, screen readers, or other accessibility tools.<sup>63</sup>

Moreover, given the magnitude of the increased surcharge amount, the Commission should create brief public service announcements to explain the surcharge change in a clear and understandable way. This information should include the specific dollar amount that customers should expect to see as a surcharge on their bills. Providing complete and clear information to consumers will help to prevent service providers from adding additional rate increases in the form of additional surcharges. A public information campaign should be included on the CPUC website and the Commission's social media accounts, and combined with ESJ work, so that the information reaches consumers and the press to help distribute the message. The Commission should also provide this information to social service agencies and community-based organizations throughout the state.<sup>64</sup>

### **III. CONCLUSION**

TURN agrees that California's public purpose program surcharge mechanism should be reformed in a manner that is fair and equitable for all customer classes, and includes all of the types of services that benefit from the surcharge support. Further, a revised mechanism must be based on the data in the record and designed to protect residential consumers in the transition away from the pure revenue-based contribution methodology. By failing to equitably assess business customers or to address broadband, the methodology proposed in the PD will harm residential consumers in the state while also delivering an unsustainable surcharge recovery mechanism. The Commission should revise the PD as suggested in the approach presented in the opening comments of TURN and CforAT on the OIR, as it will deliver a sustainable and equitable surcharge recovery mechanism.

Dated: September 22, 2022

Respectfully Submitted,

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Regina Costa

Telecommunications Policy Director

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<sup>63</sup> TURN and CforAT Comments on Staff Report, Part 2, p. 16.

<sup>64</sup> *Id.*